IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5820 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AGRI PROUDCT MARKET COMMITTEE - Petitioner(s)
Versus
KANTIBHAI GUMANBHAI PATEL C/O NUTUN GUJARAT KAMDAR UNION - Respondent(s)

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Appearance :

MR PF ADHVARYU for Petitioner(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 17/08/2007

ORAL JUDGMENT

Shri P.F.Adhvaryu, learned counsel for the petitioner; none for the respondent though name

of Shri P.F. Makwana is shown in the daily cause list.

2. The petitioner being aggrieved by the award dated 31.8.99 passed by the Labour Court, Bharuch, in Reference [LCB] No. 420/90 [Reference [LCB] No. 921/89] is before this Court under Article 227 of the Constitution with a submission that the award is bad.

3. The short facts necessary for disposal of the writ application are that the respondent came with a pleading that he joined the services as a Peon cum Watchman on 17.9.87 and all of a sudden, without any rhyme or reason he was removed from the services with effect from 31.7.89.

4. After receiving the Reference, the learned Labour Court issued a notice to the present petitioner to appear before the Labour Court who filed its reply submitting inter alia that the removal was in accordance with law; as the period for which temporary appointment was given was over, the present petitioner was justified in terminating the contract of

service.

5. The learned Court below, after recording the evidence and hearing the parties, came to the conclusion that the respondent was coming within the definition of “workman” and as he was unceremoniously removed, he was entitled to be reinstated with 40% back wages.

6. Shri P.F. Adhvaryu, learned counsel for the petitioner submitted that as the respondent had not worked for 240 or more days, the respondent could not be treated to be in continuous service.

7. On being asked that whether such plea was raised in defence, the learned counsel for the petitioner fairly conceded that no such pleading was raised. He, however, submitted that such argument was raised before the Labour Court. In the opinion of this Court, raising of an argument sans pleadings would not help and assist the case and cause of the present petitioner in raising the argument. One must raise pleadings giving notice of the pleadings to the other side and then only such person

would be allowed to raise an argument.

8. It was then submitted that the learned Court below was unjustified in directing reinstatement with further direction that the respondent be reinstated as a workman. In the opinion of this Court, the Court below has simply directed that the workman be reinstated at his original place which would mean that he will have to be reinstated as daily wager only. So far as the back wages are concerned, I do not think that the Court below was unjustified in awarding 40% back wages.

9. I have no reason to interfere. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S. GARG, J.]

pirzada/-